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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALVINO LAZAR LEWIS,

Defendant and Appellant.

B288126

(Los Angeles County
Super. Ct. No. BA452307)

APPEAL from a judgment of the Superior Court of Los Angeles County, Douglas W. Sortino, Judge. Affirmed.

Vanessa Place, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Steven D. Matthews and Chung L. Mar, Deputy Attorneys General, for Plaintiff and Respondent.

A jury found Alvino Lazar Lewis (Lewis) guilty of rape by use of an intoxicating or controlled substance, rape of an unconscious person, and misdemeanor false imprisonment. On appeal, Lewis contends that the convictions must be reversed because the trial court allowed the People to introduce evidence that Lewis had cocaine in his possession when he was arrested three months after the crime. We reject that contention and affirm the judgment.

BACKGROUND

I. The rape

The victim (S.C.) was at an ice cream shop when Lewis approached S.C. in the parking lot. Lewis and S.C. did not know each other, but Lewis bought S.C. some ice cream and the two exchanged phone numbers. That evening, Lewis and S.C. texted each other and agreed to meet after S.C. went to a poetry reading with her cousin (D.T.). When S.C. told D.T. that she planned to meet Lewis that night, D.T. advised her to meet him at a public location. The two met at a drugstore parking lot where S.C. left her parked car, joining Lewis in his car. Lewis asked S.C. what she liked to drink and she told him, “Jack Daniels.” He then purchased a bottle of Jack Daniels and returned to his car.

When he returned with the bottle, Lewis suggested they go to his brother’s house to pick something up. At the brother’s house, Lewis went inside while S.C. waited in the car. Lewis returned with two cups filled with alcohol and gave one to S.C. To her, S.C.’s drink tasted like “straight Jack Daniels.” They spent about 10 minutes at the brother’s house before driving to Lewis’s friend’s house to pick up some food. Meanwhile, S.C. continued to drink from her cup.

When they arrived, Lewis ate and talked to his friend. S.C. started to feel “weird” and “weak,” like her body was “slowly shutting down.” S.C. had consumed similar amounts of Jack Daniels on prior occasions, but she had never felt the way she did that night. From then on, S.C. could remember only parts of what happened.

Although S.C. told Lewis that she wanted to go home, he took her to his apartment and carried her inside. Once inside, Lewis put S.C. down where she leaned against a closet and sat on a plastic chair. Lewis sat across from her.

S.C. passed in and out of consciousness. She remembered crawling towards her phone in order to call D.T., but Lewis took the phone away before she could reach anyone. The next thing S.C. remembered was rolling around on the ground, shaking, crying, biting her hands, and trying to pull her hair out of her head. In a moment of self-awareness, she confronted Lewis about drugging her. After blacking out and regaining consciousness again, S.C. awoke while Lewis was having sex with her, unable to push him off of her. At no point during the night did S.C. consent to having sex with Lewis.

S.C. remembered getting up and seeing herself naked in a mirror, noticing that her dress and underwear had been placed in a corner of the room. Her hair, which had been straightened the day before, was now in an afro. S.C. cursed at Lewis and asked him what was wrong with her and why was she naked. Lewis told S.C. that she “should go shower up.” Instead, S.C. got dressed and tried to leave. Lewis, however, went to the door and told her, “You’re not fucking going anywhere.” At that time, it was already the next day as S.C. could see that it was light outside.

For the next several hours, S.C. pleaded with Lewis to let her leave, but he refused. Lewis vacuumed his apartment and told S.C. not to bring anyone back there to beat him up. Sometime in the late afternoon or early evening, Lewis finally let S.C. leave, returning her keys, wallet, and cell phone.

S.C. called her friend, B.J., to pick her up. According to B.J., S.C. was crying, sounded scared and not like herself. When B.J. picked up S.C., B.J. noticed that S.C.'s hair was messy, her dress was worn incorrectly, her lips were swollen, she had scratches on her shoulders, and bruises on her lower back. S.C. told B.J. that she had been raped. B.J. drove S.C. to D.T.'s house, where D.T. observed S.C.'s injuries. S.C. was shaking, crying, mumbling words, talking too fast, and appeared to be on drugs. S.C. also complained about pain in her vagina.

D.T. advised S.C. not to shower or use the restroom, then took her to the emergency room where she spoke to a Los Angeles Police Department officer. S.C. told the officer that she had nonconsensual sexual intercourse and that there were gaps in her memory because she had passed out. In the early morning hours of the next day, a nurse performed a sexual assault examination on S.C. The nurse found abrasions on both of S.C.'s cheeks, ulcerations to her lips, red bruising on both arms, redness on her lower abdomen, abrasions and a large area of bruising on her back. S.C. also had a laceration to her perianal area. The nurse found the injuries consistent with S.C.'s account of what happened. The nurse also swabbed S.C.'s vaginal, cervical, and anal areas. A DNA analysis of the swabs revealed the presence of Lewis's DNA.

S.C.'s urine tested positive for methamphetamine and cocaine. However, S.C. denied voluntarily or knowingly taking

methamphetamine or cocaine. Tests for other drugs which would have rendered S.C. unconscious were not performed because the metabolization rates for those drugs coupled with the lapse in time would have rendered such tests meaningless.

II. Procedural history

When Lewis was arrested three months after the assault, he had a small bindle of cocaine in his possession. The People sought to introduce this evidence at trial so the trial court conducted an Evidence Code section 402 hearing to determine its admissibility. The People argued that the evidence was relevant to support their theory that Lewis introduced cocaine into S.C.'s system without her knowledge. Lewis's subsequent possession of cocaine therefore tended to show that he had access to an otherwise illicit drug and corroborated S.C.'s testimony that Lewis gave her cocaine without her knowledge. Lewis argued its probative value was minimal because it was impossible to connect the cocaine present in S.C.'s system to the cocaine he possessed three months later. At the hearing, Lewis did not make an offer of proof, as he later testified at trial, that he and S.C. took cocaine, which he supplied, together consensually. In its ruling, the trial court noted that the three-month gap was problematic, but nonetheless found the probative value of the evidence was not outweighed by undue prejudice.

At trial, S.C. testified that she did not knowingly ingest cocaine at or around the time of the incident and did not consent to intercourse with Lewis. Later, Lewis testified that he and S.C. had consensual sex and that he and S.C. both used cocaine from his personal stash.

A jury found Lewis guilty of rape by use of an intoxicating substance; rape of an unconscious person; and misdemeanor false

imprisonment. Lewis was sentenced to nine years in state prison. Lewis timely appealed.

DISCUSSION

Lewis's sole contention is that the trial court erred when it admitted evidence that he had cocaine in his possession when he was arrested three months after the rape.

We review the trial court's evidentiary rulings for an abuse of discretion. (*People v. Jefferson* (2015) 238 Cal.App.4th 494, 502.) “ “[A] trial court's ruling will not be disturbed, and reversal . . . is not required, unless the trial court exercised its discretion in an arbitrary, capricious, or patently absurd manner that resulted in a manifest miscarriage of justice.” ’ ’ (*People v. Foster* (2010) 50 Cal.4th 1301, 1328–1329.) “The weighing process under [Evidence Code] section 352 depends upon the trial court's consideration of the unique facts and issues of each case, rather than upon the mechanical application of automatic rules.” (*People v. Jennings* (2000) 81 Cal.App.4th 1301, 1314.) The record must show that the trial judge did in fact weigh prejudice against probative value, but no more is required. (*People v. Clair* (1992) 2 Cal.4th 629, 660.)

Evidence that Lewis possessed cocaine falls under Evidence Code section 1101, subdivisions (b) and (c), which allows admission of evidence that a person committed an uncharged crime to prove something other than the defendant's character, such as motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, as well as to attack or support the credibility of a witness. The probative value of evidence admitted under Evidence Code section 1101 cannot be substantially outweighed by the probability that its admission will create substantial danger of undue prejudice. (Evid. Code,

§ 352.) But, in this context, prejudicial is not synonymous with damaging. (*People v. Karis* (1988) 46 Cal.3d 612, 638.) Rather, evidence is unduly prejudicial when it “ “ ‘uniquely tends to evoke an emotional bias against the defendant as an individual and which has very little effect on the issues.’ ” ’ ” (*People v. Doolin* (2009) 45 Cal.4th 390, 439.)

Lewis argues that, because he admitted he provided S.C. with cocaine, his subsequent possession is devoid of any probative value. Specifically, Lewis contends that his testimony at trial obviated the need to introduce the cocaine possession either to corroborate S.C.’s testimony that she was given cocaine without her knowledge or to impeach Lewis’s testimony that they knowingly used cocaine together. We disagree.

First, it is irrelevant to our review that Lewis later admitted during cross-examination that he gave S.C. cocaine. Our review is limited to the evidence before the trial court when it heard the motion to exclude the evidence. (*People v. Garry* (2007) 156 Cal.App.4th 1100, 1105, fn. 2.) At the Evidence Code section 402 hearing, Lewis gave no indication that he would testify to providing cocaine to S.C. Nor was it reasonable for the trial court to make such an assumption. We may not consider facts unknown to the trial court when it made its ruling. (*People v. Hartsch* (2010) 49 Cal.4th 472, 491.)

Second, notwithstanding Lewis’s subsequent admission, the trial court correctly concluded that the evidence was highly probative to show that Lewis had access to an otherwise illegal drug which S.C. claimed was administered to her unknowingly. As the trial court indicated in its ruling, the People did not have to establish that the particular cocaine in S.C.’s system was connected to the cocaine found on Lewis three months later.

Rather, S.C. denied using any cocaine, but tested positive for it shortly after she encountered Lewis, behaving erratically and suffering significant gaps in her memory. The evidence was clearly probative to show opportunity and to support S.C.'s account of events, thus falling within the exceptions to Evidence Code section 1101. Furthermore, though the trial court considered the gap in time, it nevertheless found the probative value of the evidence outweighed any prejudice. The trial court's ruling was well-reasoned and therefore not an abuse of discretion.

Lastly, even if we were to agree that the trial court's admission of Lewis's subsequent possession of cocaine was error, we would still affirm. Error in admitting evidence of a defendant's prior acts is subject to the standard of prejudice set forth in *People v. Watson* (1956) 46 Cal.2d 818. (*People v. Welch* (1999) 20 Cal.4th 701, 750.) Thus, the trial court's judgment may be reversed only if the defendant shows "it is reasonably probable that a result more favorable to the [defendant] would have been reached in the absence of the error." (*Watson*, at p. 836.)

Lewis admitted to possessing, using, and furnishing cocaine to S.C. on the day of the rape, thereby eliminating any prejudicial effect of evidence that he possessed cocaine on the day of his arrest. Further, the record shows that Lewis's cocaine possession and its presence in S.C.'s system constituted only a fraction of the evidence that supported the jury's guilty verdict. The People presented, among other things, S.C.'s testimony which directly contradicted Lewis's account of events, other witness testimony of S.C. before and after the incident, S.C.'s significant injuries, DNA evidence from the rape examination linking Lewis to S.C., and expert testimony that other drugs that could have rendered S.C.

unconscious would have been undetectable by the time S.C. presented herself for examination. Thus, any error was harmless.

DISPOSITION

The judgment is affirmed.
NOT TO BE PUBLISHED.

DHANIDINA, J.

We concur:

EGERTON, Acting P. J.

MURILLO, J.*

* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.